

HCBS Programs Multi-Topic Listening Sessions

Public Input

Public Comment Sessions: August 18-25, 2014

Purpose: To community important changes to the HCBS waiver programs and to get feedback on the changes from consumers, their friends and family, and providers.

Format for each session:

Ten in-person meetings were offered at six Kansas locations. Three conference call times on two different days were offered.

Wichita State University Center for Community Support and Research (CCSR) facilitators opened the meetings, provided info about plan for the session and logistics, and then introduced state staff.

KDADS staff presented 30-40 minutes of information on:

- Department of Labor rule changes
- Fiscal Management Services model proposed by the FMS workgroup
- The impact of Department of Labor and FMS changes on guardianship and personal services
- The multi-functional eligibility instrument

CCSR facilitators took comments on these topics, after asking the question:

- What should the state of Kansas keep in mind as it plans to address these areas?

Then the participants were split into groups based on their interests. KDADS staff presented information on the following topics in small group settings:

- Possible Frail Elderly program changes related to waiver renewal
- Possible Physical Disability program changes related to waiver renewal (limiting age to strictly 64, using Social Security definition of physical disability, and adding clarification to the crisis process)
- Possible Autism program changes due to Kansas legislation

CCSR facilitators took comments on these topics.

Summary of Comments: Below, page 2

All Public Comments: Below, page 4

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Summary of Comments

Department of Labor rule changes:

- The majority of comments and questions were attendees **trying to understand** the Department of Labor rules and proposed changes.
- The next most common comment was that there are **not enough workers**, especially in rural areas, to meet the rules.
- The third most common comment was that attendees want to **keep sleep cycle** support for consumers.
- Other comments included concern that this would drive consumers into **institutionalized care**, which is more expensive and less safe than care at home or in the community, and that **hiring more workers would negatively affect consumers**.

Fiscal Management Services model proposed by the FMS workgroup:

- The majority of comments and questions were attendees **trying to understand** the proposed changes to the FMS model.
- The next most common comment was that guardians want to **retain guardianship and continue to get paid** for providing services.
- The third most common comments were about **alternative ways** to remain in control of a consumers care, such as securing Durable Power of Attorney or separating the “employer of record” from the “manager/worker” providing services.

The multi-functional eligibility instrument (MFEI):

- There were not very many comments regarding the MFEI.
- The majority of comments or questions were attendees **trying to understand** the changes regarding the multi-functional eligibility instrument.
- The next most common comment was that there are **too many assessments**.
- The third most common comment was that this tool **seems useful** if it will bring clarity to the process of determining eligibility for waivers.

Possible Frail Elderly program changes related to waiver renewal:

- There were not very many comments regarding the Frail Elderly waiver renewal.
- The majority of comments or questions were attendees **trying to understand** the proposed changes to the FE waiver.
- The second most common comment was that **finding reliable providers and workers is hard**, especially in rural areas.

Possible Physical Disability program changes related to waiver renewal:

- The most common comment was a **request for a comparison of services** offered on the physical disability waiver and the frail elderly waiver before attendees could decide if moving people on the PD waiver to the FE waiver at age 65 was a good idea.

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- The next most common comment was that **different services and reimbursement rates** between these two waivers affects whether people stay on the PD waiver or move to the FE waiver.
- Other comments included **positive responses to clarifying the crisis process** and the request for **help in making the transition** from the PD to FE waiver.

Possible Autism program changes due to Kansas legislation:

- There were not very many comments regarding proposed changes to the autism waiver.
- The majority of comments or questions were attendees **trying to understand** the possible changes.
- The second most common comment was that it was **hard to find reliable workers**.

Other common comments:

- Please send us or post online the draft waivers to review.
- What role do the MCOs have in all these changes?
- We should combine some of the waivers or move all HCBS services under one waiver.
- Thank you for providing me services.

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El Dorado, August 18, 2014, 10:00am-noon

KDADS presenters: Kimberly Pierson, Jim DeCoursey, John Barry

CCSR facilitators: Amy Delamaide & Steve Williams

36 attendees

1. Comments on Department of Labor rule changes, Fiscal Management Services model proposed by the FMS workgroup, the impact of Department of Labor and FMS changes on guardianship and personal services, and the multi-functional eligibility instrument:

- I have an employee who works for a Unified School District, so they are technically employed by the state of Kansas, and my agency. How do the Department of Labor rules affect this person?
- What does NRI stand for? [Note: NRI is what “Inter-RAI” sounded like in this meeting]?
- The vendor fiscal agent model sounds like a lot of work for consumers
- Why did the FMS working group recommend the vendor fiscal agent model?
- Don’t change to new financial model
- Regarding the Department of Labor rule, Authenticare is not feasible because of need for a single worker to use different employee identification numbers depending on who she is working for – who will track hours?
- Guardian-self-directed – as a guardian, could not be able to care for son, would have to hire another individual, dramatic changes to the individual receiving the care.
- Change in model – state can’t afford to change FMS model – improve Authenticare.
- FMS provider suggested enhancements
 - Tracking employers
 - State needs to track
 - It needs to be done
- Concerned about the pool of workers if capped at 40 hrs per week in rural areas
- Authenticare – improve tracking of those working more than 40 hrs
- If the state had stayed with FMS providers who had fewer 50 employees, we wouldn’t have to make any changes to meet Affordable Care Act requirements. It would be easier to track. There are too many big, corporate FMS providers in this state.
- Supportive care is difficult to provide in rural areas – if increase, don’t have staff to provide care in these areas.
- We are losing money because we can’t afford to provide services.

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2. Comments on possible Frail Elderly program changes related to waiver renewal:

- Sleep cycle support – attendant care is affected by new rule across the board with all waivers.
- Sleep cycle – breakdown to hourly rate.
- Applies to workers who work for multiple providers.
- How does DOL affect residential services and assisted living?
- How many guardians are providing care? Will affect services.
- Renewal if Sept 30 – plan has not been submitted
- FE and PD are 5 year plans

3. Comments on possible Physical Disability program changes related to waiver renewal (limiting age to strictly 64, using Social Security definition of physical disability, and adding clarification to the crisis process):

- We'd like to see more slots on the waiver
- How does the waiting list prioritize individuals? Rating system? Level of need? Length of time on the list? (Jim listed prioritizing factors)
- A rating system would be better than first-come, first-served.
- We're seeing appropriate cuts in hours under MCOs. Will that savings go to reducing the wait list?
- Is the waiting list based on the number of people? Or number of hours?
Response from state staff: number of people
- You should/could identify hourly savings.
- Concern: self-direct changes. Sometimes person "providing services" is in cahoots with the consumer. Authenticare didn't catch it. Misuse of system, fraud? It's frustrating. **Response from state staff:** KDADS and KDHE have fraud hotlines
- Concern: my friend was self-directing but got taken advantage of. We need better safeguards around who can self-direct.
- My son feels that the number of assessments he has had to go through each year is more restrictive than if he were on parole. As a parent, I have to take off a day of work every time he is assessed. As a parent, who can I call with questions?
- How does a blind consumer verify time in Authenticare?
- Participant response to parent who was having trouble tracking time of worker: Your FMS provider should be helping you more!
- **Question from state staff:** Right now, PD is 16-64, but we have a grandfather clause that allows someone to stay on PD (rather than go to FE), what do you think of that? **Participant responses:**
 - How can we compare what is offered on the PD waiver versus the FE waiver? We need a comparison chart like you see for health insurance.
 - Is it fair to keep older people on PD if they could move to FE? Since there is a waiting list.

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- For the PD waiver, it would be helpful to have a flowchart explaining steps to get on the waiver.
- But the difference in reimbursement rates motivates state to keep people on PD waiver because it pays less than FE. I'm not saying bring FE down, I'm saying bring the others up.
- Assistance with transition to FE would help. We need as many PD slots as we can get!
- Explore volunteer working opportunities for people on waivers.
- All the DOL, FMS, etc. changes will have a big impact.

4. Comments on possible Autism program changes due to Kansas legislation:

- Any model yet for restraints? Seclusion and restraint policy is now proposed and open to comment on website.
- DOL will affect respite care.
- **Statement from state staff:** An appeal has been filed with Feds. **Question from participants:** any likelihood that appeal will be heard? **Response from state staff:** State has not heard back.

El Dorado, August 18, 2014, 1:30-3:30pm

KDADS presenters: Kimberly Pierson, Jim DeCoursey, John Barry

CCSR facilitators: Amy Delamaide & Steve Wilson

26 attendees

1. Comments on Department of Labor rule changes, Fiscal Management Services model proposed by the FMS workgroup, the impact of Department of Labor and FMS changes on guardianship and personal services, and the multi-functional eligibility instrument:

- FMS – will workers get paid for holidays?
- Autism – wife is worker and guardian – husband is guardian – we pay extra but do it with private pay – guardians can't get paid anymore – we have to jump thru "hoops" to survive – don't want vendor model – we need two people just to transport.
- HCBS rule – food accessible at all times – can't lock doors – how do we deal with this in our home with health issues?
- Changing FMS to vendor fiscal agent model – IRS will not let guardian have EIN. I used to have to have an LLC as a parent/guardian who provides services. Is this a possibility under new rule?
- Guardianship – in our home we're a licensed foster home – in rural area – help is not available in a rural area – requires 24 hour care – want to retain guardianship

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and get paid – others will not assume role of guardianship – will have to institutionalize.

- NRI [Note: this is Inter-RAI] tool – eligibility tool/ questionable – not same as MCO tool – services cut by MCO thru eligibility – tool KDADS wants determine if eligible for services – what guarantee is there that questionnaires are legitimate?
- State makes plans – DOL has to deal with money – talk to people who handled the money.
- Final rule – community setting – families and consumers need to be included in the survey you sent to providers.
- Administration and government are making decisions without having worked with clients needing services – need to be more realistic.
- Quality of care for client – at home services vs. out of home services – care in home for 24 hrs per day – we need to continue to receive pay for services
- It is not a 9 to 5 or 40 hr per week job.
- Empathy for those who need/receive care – want to continue guardianship.
- FMS workgroup – have been part of group for over a year – biggest issue is DOL and 40 hrs per week – guardian can't get paid under proposal – DOL has to be addressed now!
- Thank you for what you have done for me.
- Do we have info on what other states are doing? We are not just going alone!
- Having problems with continuous changes causes much stress.
- Who do we need to address at DOL? Wage and hour division. This is not related to affordable care act, correct? Correct.
- Is there an option of paying as salaried – not hourly? Unlikely.

2. Comments on possible Frail Elderly program changes related to waiver renewal:

- Guardianship not directly affected by Aging and Disability Resource Center (ADRC).
- Why not have the same rules for all programs and waivers?
- Staff at ADRC need clarification on all waivers so we can talk intelligently to those who call with questions.

3. Comments on possible Physical Disability program changes related to waiver renewal (limiting age to strictly 64, using Social Security definition of physical disability, and adding clarification to the crisis process):

- I'm not a fan of narrow definitions
- What's going to happen when we're gone?
- People have an entitlement to institution or group home if there is an urgent need.
- Is mental illness a service available on this waiver? **Response from state staff:** No.

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- **Question from state staff:** Do you have comments on limits of mental illness services on PD waiver? Response from participants: We shouldn't limit it.
- **Question from participant:** If someone is on the PD waiver but is a better fit for I/DD, is there a way to assess that? As people have become adults, from being kids on I/DD waiver, their needs may be better met by PD waiver. **Response from state staff:** The MFEI may help with that.
- If all services were under one waiver, then money assigned by type of service needed, that would help
- **Question from state staff:** PD waiver is for people age 16-65. If you're on the PD waiver, you don't have to go to FE when you turn 65. Comments?
 - That could be taken care of with everyone on one waiver.
 - Question from participant: But isn't the definition for FE different from PD? Response from state staff: both waivers score ADL's and IADLs the same.
 - People don't want to move to FE because meals are paid under PD and not FE.
 - Rates should be the same for all waivers!
 - Every waiver has different payment rates, different assessment tools, and different reimbursement rate to provider.
- Minneapolis has a model "community waiver" – much discussed, very experimental.
- Why would the person who used to be our case manager (but isn't anymore- Kancare) let us know we'll be losing hours? On the I/DD waiver what is the difference between case managers and care coordinators?
- There are a lot of assessments and it's confusing. Why did we have an assessment for our daughter on the PD waiver five months early?
- I'd like to add- We've been to a lot of these meetings, provide comments, they go to the powers that be, then the changes made don't reflect our feedback.

4. Comments on possible Autism program changes due to Kansas legislation:

(No participants in this group.)

Great Bend, August 19, 2014, 10:00am-noon

KDADS Presenters: Kimberly Pierson, Jim DeCoursey, John Barry

CCSR facilitators: Steve Williams & Kevin Bornhoff

24 attendees

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1. Comments on Department of Labor rule changes, Fiscal Management Services model proposed by the FMS workgroup, the impact of Department of Labor and FMS changes on guardianship and personal services, and the multi-functional eligibility instrument:

- Sleep cycle- look at alternative – state will do this –may be eliminated
- Will family be required to provide ACA coverage – no less than 50 employees
- Rural Area – impact of overtime will be to eliminate number of workers
- Guardians that are not paid care givers do not have a conflict of interest
- Guardian that receives payment thru day & respite is there a conflict of interest? Need to get answer to this
- Is adult foster care for IDD an option?
- Other state go to foster care & the foster care payment is not taxed
- Can these supports (sleep cycle) be replaced by companionship? DOL does not exempt
- Rural based may leave HCBS program. Are they still under these rules? Still would be subject to DOL rule
- This will force people into institutional settings
- Relinquish guardianship & become durable power of attorney. Will DOPA direct care? If so... does this fall under same rule? DPOA is customized for needs of consumer. Hard time finding both.
- DPOA may have more power than guardian – does not kick in until needed.
- Individuals served need a transition period. This is a big change. CMS provided residential setting (timeline) so don't anticipate change on Jan. 1. Should have 5 years. We don't know exactly - those out of compliance will need corrective action plan.
- Kansas is asking for extension/delay in DOL rule – still have to plan
- FMS provider can cap a rate even when consumer wants to pay more to provider
- Court can determine DPOA if person served cannot make that determination.

2. Comments on possible Frail Elderly program changes related to waiver renewal:

- FE waiver – How would changes affect elderly person who needs waiver services? Still can be agency directed.
- When is determination made that they can no longer be self-directed?
- Agency closes– but not a new agency to take over – what happens?
- Current FMS model – billing process is the biggest challenge
 - Lack of providers/employees in rural areas
 - Look for reliable people to serve
- How does one report Medicaid fraud?
- Comprehensive support & attendant care – can they have both? Is it be abused? Is comprehensive support needed? Now with MCO's

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- Pay rate for workers for FE workers! Attendant care/comprehensive support – can we adjust? (FMS provide)

3. Comments on possible Physical Disability program changes related to waiver renewal (limiting age to strictly 64, using Social Security definition of physical disability, and adding clarification to the crisis process):

- 4 way employer of record. (MCO's CDDO's, KDADS, and consumers)
- FMS provider work group – recommendations look good
- Do we have case manager in system now? No! Independent Living Centers step up. MCOs have service coordinator not CMs.
- Need case manager in PD program.
- Forcing PD to FE at age 64 is age discrimination – (it would reduce waiting)
- FE structured for cost containment
- Could we go to single waiver based on needs?
- MCO don't look at individuals need instead of grouping people together by setting
- Disability determination for PD is not consistently verified. Doctor verification is not required. Needs to detail limitations. Can't he or won't he do this? (assessed the same)
- 2-3 page checklist from Dr. reminder vs. actual assistance role of MH dual diagnosis is not always addressed. Can Health Home help with this?
- CM would help determine crisis needs.
- Crisis services are not "rated" on a scale; just presence of certain criteria. Decision hard to make without level of needs.
- Where is room for improvement and graduation? keep services in case they need in future – long-term, shorter? Keeps people on waiting lists longer.
- Use more common sense (36 hrs housekeeping for a mobile home)
- High Plains need more scrutiny by outside party
- How does windshield time fit in to hour requirements?
- Send draft waiver to have consumers, providers review

4. Comments on possible Autism program changes due to Kansas legislation:

- Insurance will cover autism – what does that mean – private insurance is required to pay for services for children age 0-12. Need to be ABA certified.

Conference Call, August 19, 2014, 10:00-11:30am

KDADS presenter: Aquila Jordan, Jeannie Frake, Mike Horan, Larry Kelly, Ashley Kurtz
CCSR facilitator: Amy Delamaide

151 people on line, including facilitator and state staff.

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Given the number of people on the line, the call was difficult to manage and many attendees had trouble hearing the information presented.

Information was presented regarding Department of Labor rule on FLSA, CMS HCBS settings final rule, the new functional eligibility instrument. Also Autism program changes and FE/PD waiver renewals.

Facilitator asked one question and callers provided comments:

What should the state of Kansas keep in mind going forward as they plan to address these areas?

Comments:

- **Maria:** I have a question about the 40 hour work week, minimum wage, 40 hours. They'll pay \$7.25 per hour, which is minimum wage. How will the overtime work, pay at time and a half?
- **Mary Ann:** I will go online and review what you told us to look at. I'm satisfied with how my program is working. I'm paying my PA. I'm on the Physical Disability and Soc. Sec level. I would like my situation to remain the same or improve. Willing to do surveys. Please continue good services.
- **Risa:** First of all, I tried to call that 368 line for materials, but that line has been busy. I didn't get my paper work till Saturday. Second of all, will my client obligation go up? I pay \$481.08 and you're talking it's gonna cost overtime money. And my sleep cycle might be taken away. I have seizures at night. If that gets taken away, that's gonna affect me big time.
- **Stella:** I was concerned about the department of Labor. My mother has over 40 hours. You did give online numbers for more detail. I didn't get it all down fast enough. Will you please repeat the online number for the change in programs regarding federal programs and change for frail elderly? (Aquila provided phone number and website for info again.)
- **Evelyn:** I have a question about HCBS waiver, guardianship, and caregiving. I'm taking care of daughter turning 18. I have to get guardianship. I quit work to take care of her. I was hoping to get paid for providing care. How is that going to work? Where do I go? Who do I call to find out the details on that? (Aquila responded with more info about FMS model options.)
- **Sherry:** I didn't understand, minimum wage is going drop down their pay? They pay is going to be cut to 7.25 an hour? Even if they are already making more than that? (Aquila responded there is no change, that's just the minimum.)
- **Monya:** How is this going to affect the TBI waiver? What about the hours and how is this going to affect my worker? I pick and choose my personal worker. Is it going to affect the fact that I'm not going to be willing to be able to let the federal or anybody else choose who comes in to work for me? (Aquila clarified that the Department of Labor won't choose who comes into your home, but because of

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the DOL rule, the state of Kansas will have to limit the number of hours that workers work per week.)

- **Tina:** I'm caregiving. I have a 24-year-old at home. Cut back way on my hours I'm the one who is his primary caregiver. He has seizures. By being his parent legal guardian. What changes do you see as far as that goes? 40-hour week? (Aquila: if the 40-hour per week wouldn't apply, we're hoping to make the least amount of changes to guardianship as possible. Choose a designee.)
- **Mary:** I have an adult autistic son. He is in a facility. We want to move him to another facility. Write off part of his services. Can't move to another county. Lists he's on/off. Waited two years. Will we ever be able to move him? He's 37 years old. (Aquila asked caller to contact Greg Wintle, the program manager, at 785-296-0935.)
- **Tracy:** I have a comment on if a person is getting paid more than minimum wage, will that remain the same? (Yes.)
- **Carolyn:** I have a 33-year-old daughter. She gets 6 hours a day of PSA, 6 hours of nursing, I do her night support. She'll either get her day support or her night support? (Aquila: those would be the type of situations that we would need to take into consideration.)
- **Mayson:** This is Mayson calling about Paula. She does not get any night support and she needs help through the night to go to the bathroom and to take medicine for pain and we lost that a year or two ago. We have 56 hours for her. Cutting workers to 40 hours. Same person for seven days. We don't want that to change. But night support would be nice to get back. Would be nice if I could get the damn money again. I'm the one who is responsible for her at night and do take care of her. Please keep that in mind.
- **John:** You talked about PD. You talked about a tool. Extra tool that they will use to evaluate? Please explain a little bit more. I am an amputee and I have a life-threatening disease. (Aquila explained: MFEI. Put the two tools together and apply them at the same time. Ask some additional questions. Not just physical disability, other circumstances.)
- **Diane:** This meeting is mostly for people who have a dependent who is being served at home. Will there be a later meeting for those of us who have children in group homes or semi-independent settings? (Aquila: you can ask your questions now.) No 40 hours and no night support. One of my daughters is in a group home. Two people in during the day, only one at night staff. Will they have to cut back on their staffing? (Aquila: No impact on provider-owned setting. Already following rule.)
- **Tammy:** I would like clarification on new tool being developed. Is this going to be used for the I/DD population also? (Aquila: not used at this time with I/DD. Will consider it over the next year as we improve the tool and strengths-based model.) Can we go on the website to find this tool to look it over? (Aquila: not posted at this time, but information is available on the website.)
- **Sherry:** I have a phobia of strangers. I have a person who's been working for me 7.5 hours day and night support. Does that mean I would have to have another worker? (Aquila: if you are currently choosing who works for you, you would be

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able to choose the person.) The same person who does the day shift? (Aquila: it would have to be someone different.)

- **Shenae:** How do we get the answers and the questions to all of the questions today? (Aquila: We are going to post those on our website. We'll also send them out so you can see the answers.) What is the website? (Aquila: www.kdads.ks.gov Click on community services and programs. That link has all of our programs and information.)
- **Linda:** I'm a quadriplegic since 1983. I was living in my home and I was getting night support. They would lock the doors to where I couldn't get out until the next morning. I have stray cats and sometimes I would need to have a bowel movements or I would have to hold it until the next morning. They have moved me into their place with my own quarters. They stripped her away from her night support. How is that going to be working? (Aquila: please call our office. 785-368-3246 to connect.) Okay, I will be calling it.
- **Clarissa:** I have a mother that is a paraplegic, only one arm, can't stand up or walk by herself. She currently has night support. It took us a long time to get caregivers. I have to split it up across 5 caregivers. My mom is worried that she won't be able to get her support. She has to have people there because she has multiple health issues. Low heart rate. Needs to have someone there at night to make sure she doesn't get choked. She feels pain even though she can't feel her legs. She's worried that it will affect her and the caregivers we have. I have to have someone to come in to help with an extra changing ahead of time. If they would take my mom's care away, it would devastate her. She would not get the proper help in institutionalized care. I have a couple of people I take care of in another county. She wouldn't get help right away when she needs it. The Medicaid people like my mother would be completely ignored half of the time.
- **Rosalie:** Are their hours going to be cut? I've got a defibrillator and medication. I need my workers to help me out. (Aquila: if a person currently has several workers, they are not likely to have a change, as long as they stay within the 40 hour limit. It sounds like the discussion is about sleep cycle and how that will be affected.)
- **Clarissa:** That will cut into her hours
- **Jeff:** This is regarding the 40-hour limit. I have muscular dystrophy and use a ventilator. I've occasionally had a situation where some of my workers have to work more than 40 hours in a given week and I think that limit is too restrictive. I don't appreciate the state trying to limit how and when my workers can be present.
- **Jennifer:** I noticed you have meetings up until Friday this week. Can we expect the list of compiled questions next week? (Aquila: they would be available by next week so we can get all the comments in.)

Aquila provided information about additional meetings in person throughout the week of August 18-22, 2014, and upcoming phone calls. Also provided call in numbers, website, and where to find information to connect with the MCOs.

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Great Bend, August 19, 2014, 1:30-3:30pm

KDADS presenters: Kimberly Pierson, Jim DeCoursey, John Barry

CCSR facilitators: Steve Williams & Kevin Bomhoff

3 attendees

- 1. Comments on Department of Labor rule changes, Fiscal Management Services model proposed by the FMS workgroup, the impact of Department of Labor and FMS changes on guardianship and personal services, and the multi-functional eligibility instrument:**
- 2. Comments on possible Frail Elderly program changes related to waiver renewal:**
- 3. Comments on possible Physical Disability program changes related to waiver renewal (limiting age to strictly 64, using Social Security definition of physical disability, and adding clarification to the crisis process):**
- 4. Comments on possible Autism program changes due to Kansas legislation:**

Only a few participants at this meeting, thus we met as small group for informal discussion on all topics.

Comments:

- Cost of minimum wage will drive people to institutional care
- How will IRS interpret one parent being guardian and the other being the provider?
- Assisted living makes a profit from the FE waiver rate. Then they push PD to move people to FE waiver.
- Finding home modification providers is a big challenge.
- PD rather than yes/no, ask, can people do things? Currently not asking if, how much, or to what degree a person needs assistance.
- Crisis funding for programs eligibility – what criteria is needed?
- People don't know about programs – go a long time before knowing about programs.
 - CDDO should promote this.
 - Schools should know more/educate more. Teachers need to know more about waivers.
 - Teachers are not part of basis assessment.
- How do you get respite care or sleep cycle care? CDDO says services no longer available.
- Guardianship – single parent – What do I do? Don't want to give up guardianship. Don't have options as single parent.

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- Assisted living may profit more voluntarily for FE waiver than with PD waiver (true/false).
- If a program has a wait list, how do you meet crisis situation list?
- Best avenue for getting info out?
 - Schools need to be educated/school age children
 - CDDOs

Conference Call, August 19, 2014, 5:30-7:00pm

KDADS staff: Aquila Jordan

CCSR facilitator: Amy Delamaide

134 people on the line, including facilitator and state staff

Given the number of people on the line, the call was difficult to manage and many attendees had trouble hearing the information presented.

Information was presented regarding Department of Labor rule on FLSA, CMS HCBS settings final rule, the new functional eligibility instrument. Also Autism program changes and FE/PD waiver renewals.

Facilitator asked one question and callers provided comments:

What should we keep in mind going forward as we plan to address these areas?

Comments:

- **Teresa:** So far it sounds like it can work if the system goes through like it should.
- **Nicole:** When will we know if the changes take effect? Will it be June 1st, 2015? Will we have to drop down to \$7.25?
- **Janet:** I haven't been able to understand nothing because of all the people talking. Is there any way you'll be able to send me the changes in the mail. I have COPD. I can't come out Friday in the heat. (Aquila: 785-368-3246 is for further information. Leave a voicemail if you cannot get through on this line and we will get back to you. www.kdads.ks.gov you can go to the community and services on the link of the left side of the page for the discussion of changes from today.)
- **Eva:** I am a diabetic and I get up from anywhere between 4 and 8 times a night to go to the bathroom. Will they take that into consideration?
- **Teresa:** I have hepatitis C, I have chronic kidney failure and liver failure, I have two diabetic ulcers on my feet. Please send me to some better doctors or something because I don't want to have my foot amputated.
- **Rosemary:** I am disabled. I am asking about the night support. I am currently in a wheel chair and I have epilepsy and sometimes I have to ask for someone to help get me to the bathroom. I need help when I holler.

HCBS Programs: Multi-Topic Listening Sessions.

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- **Ron:** I have a question about sleep cycle. Sleep cycle here is paid by the night, not by the hour. How would that affect us? (Aquila: your workers would be paid minimum wage and count towards 40 hours per week and overtime. Many changes for individuals because it is a more expensive process for the state.)
- **Rhonda:** If it's too late to try to get the federal government to keep Kansas exempt, can we call our congressman, can we make that happen? Is there a petition? (Aquila: yes, please call your senator and representative. Please ask them to exempt Kansas. We have a telephone number for the DOL so you can share concerns.)
- **Ada:** I just need to know where to call because people are rude. (Facilitator: The DOL number is 1-866-487-9243.)
- **John:** I'm going to call the number. We all have illnesses, we are supposed to share comments about the rules that are taking affect. I am going to call the number because there is a lot I could not hear.
- **Angela:** I'm on KanCare. Is this all going to change my coverage? (Aquila: if you are on KanCare and you are self-directing your care, the changes you could expect are the ones we discussed. Your provider would be paid minimum wage, your provider would be limited to 40 hours, and sleep cycle changes. It does not relate to all of your other services. Contact your care coordinator for more info.) Am I still going to be able to have the worker that I have? Also will somebody be coming out to help like they used to in the past to give information on what they will be covering. (Aquila: You can keep you current workers but it also might mean you have to higher additional workers and your care coordinator will be coming to your home to discuss the services that you will receive and if there are any changes that will be needed for those services.) When will that be happening? They will notify me of that? (Aquila: yes, they will.)
- **Mish:** On the 40 hour per week thing, my patient has me during the day and another person doing night support. When I work 40 hours all together does that mean that whatever she works will take off of my 40 hours? Or will two separate workers have two separate portions? I didn't know if her doing night support would take away from my 40 hours.
- **Gloria:** I have guardianship for my daughter who is 20, she is like a 2-year-old. Right now that's what sustains us. Does that mean I have to find someone else to take care of my daughter? (Aquila: If there are changes to the DoL that limits workers, it would affect all workers. If we change the self-direction model to the vendor fiscal agent model, IRS has a rule that the individual who has the EIN could not be paid to provide services.) So do I need to get an attorney or something? (Aquila: it will be helpful if you stay on top of these discussions.)
- **Charles:** We're going to court over this on Thursday. (Aquila: Is that for an appeal for a reduction in services? If so, this is different than that because this is related to the hours you could work.) And then the same with the night support, even if we won the appeal? (Aquila: If the dol rule stands, support could be changed, limited, or eliminated. Sleep cycle support—the state will have to consider changing, limiting, or eliminating sleep cycle support. Please call the Dept of Labor to tell how this would impact you.)

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- **Cynthia:** I take care of Jennifer G. and first of all I want to get the number for KanCare. I only take care of her for 23.75 hours a week and there is no guardianship. Does that affect me at all? (Aquila: There is no limitation on guardianship there. The number is 1-866-620-7326. The conference code number is 428-358-3031.)
- **Ms. Rhodes:** I was informed by the agency that pays me, the hours I work for one client, I would only be able to work with one client only. I wouldn't be able to work for more than one client a week even if it's under the 40 hours a week. How is that supposed to work? I'm not supposed to have any other job except with that one client. (Aquila: The agency is describing is a limitation the DOL issued a rule back in July that they believe that an individual that gets their services paid for by Medicaid or managed care through the state that it is possible that the state could be the joint employer. That means that if the state is considered the employer that any hours that you work for any individual counts towards your 40 hours. We disagree with the way that the DOL has characterized that so we sent them a letter asking them to reconsider that interpretation because of exactly what you are describing. That that would mean that even if you are not working 40 hours we would be limiting you from being able to work for someone else and be able to make a living. We believe that is not the intention of the rule and we have asked them to clarify that. We would not have to limit your ability to work for other individuals.) If I happen to have a child who is on the waiver, is that going to affect them if they are receiving services from someone else, unless you are also working with your child?
- **Audrey:** My daughter is Katherine S. I'm the person that takes care of her. She just had a KanCare case manager come out and upped my hours to 40 hours day and minimum of 6 hours per night. How would that affect her or me taking care of her? (Aquila: the possible change that would affect her is that someone else would have to do the night support or some hours during the day.) Why would it have to change if someone already came out to evaluate her this year? (Aquila: that is your normal annual review from KanCare.) Most likely I would have to hire someone else to come and take care of her but only if anything changes as of January
- **Fern:** My mother is Edith C. She has a lady who stays with her 24 hours because she is bed-bound right now. If they cut her down to only having 40 hours per week, how will she live independently? (Aquila: please call our office so we can talk through your case because it's a little bit different. Call at 785-368-3246 and ask for Laura.)
- **Next person:** I keep hearing you talk about KanCare. I'm with Sunflower. I just have the 40-hour days. (Aquila: it's the same thing.)
- **Nicole:** If I'm approved for 42.5 hours, would that 2.5 hours would that be considered the time and a half that you are talking about? (Aquila: That 2.5 hours would need to be provided by someone else.)
- **Ms. Henry:** My question is for the functional assessment. Is it changing? Is that going to change regardless of what the department of labor does? (Aquila: yes, that is a different change. That is separate from the department of labor.) And that change IS going to happen, correct? (Aquila: correct.)

HCBS Programs: Multi-Topic Listening Sessions.

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- **Peggy:** I couldn't hear the beginning of this call because of all the chattering. My client having to get a tax ID number. Did I hear that correctly? (Aquila: that would be if we changed our FMS model. Change to a vendor fiscal model.) I get paid through independent living. Will that affect them? (Aquila: Yes, the individual would have an individual employment i.d. number for all the individuals receiving services.)
- **Ella:** My question is about the 40 hours per week limitation. Is this 40 hours per week per person or for the total? If you have 3 or 4 people who are working with the person? (Aquila: We're talking about 40 hours per week per person. If you had four workers they could work a maximum of 160 hours in a week.)
- **Ms. Shimon:** I was interested in learning more about the vendor fiscal model. Is that a definite thing? If so, is it applicable January 1. (Aquila: No, it is not definite, it is something we would like your feedback on. We will take those comments and provide them to leadership. If it would become effective, it would become effective on January 1.) Would there be a transition time? It sounds like there would be lots of time to fill out forms and make changes.
- **Tammy:** I have a night support person for my mother in law. We have 47 hours during the night support 6 nights a week, then 7 hours. She's also on disability so she can only earn \$900 a month. So my mother in law would have to be in assisted living if she didn't have the night support. I'm concerned about that. The other question I have is: How do you know if night support is going to be eliminated? (Aquila: We will look at it per case per person.)
- **Austin:** Does this affect the PD waiver? (Aquila: Yes.) I also heard that you cannot choose your own caregiver? (Aquila: That's a little incorrect, you can still choose your own caregiver, and they are just limited to working 40 hours a week.)
- **Cynthia:** I was just asking about the thing Friday—is that going to be downtown. Is that the same thing? (Aquila: Yes.)

Salina, August 20, 2014, 10:00am-noon

KDADS presenters: Kimberly Pierson, Jim DeCoursey, John Barry

CCSR facilitators: Kevin Bomhoff & Judy Burgess

93 attendees

1. **Comments on Department of Labor rule changes, Fiscal Management Services model proposed by the FMS workgroup, the impact of Department of Labor and FMS changes on guardianship and personal services, and the multi-functional eligibility instrument:**
 - Reducing hours to 40/week will force people to give up providers they have worked hard to find.
 - Will need to train a new person and learn to trust new person. Very hard to find.
 - Can there be a waiver to allow more hours?

HCBS Programs: Multi-Topic Listening Sessions.

Public Comment Sessions: August 18-25, 2014

- Very hard to find more workers in rural areas.
- Court has ruled we could be both guardian and provider and family agrees. Why do I have to decide between? This is taking her freedom away.
- Grave concern that family members can override FMS decision not to hire someone.
- Kansas as employer makes no sense.
- FMS provider would not know if someone works for other HCBS provider.
- No FMS provider will take on risk of consumer hiring someone they don't approve.
- State should have ability to do background checks.
- Already short on workers asking FMS to track hours between consumers to monitor 40 hours.
- If you have to hire someone to do something, you should pay even if a family member.
- Need to do background check on all workers. Employee should pay for own Sleep background check.
- If we are state employee, we should get benefits.

2. Comments on possible Frail Elderly program changes related to waiver renewal:

- Is it legal for my mom to live with me and I get paid for 40 hours a week? She can make decisions but can't perform daily functions. Can't I get assistance to pay for someone to give treatments at night while I work?
- How does grandmother fit into changes? She is not a guardian.
- One person had to move to another community in order to get services. Finding providers is an issue.
- No reimbursement for providers for travel – this is one of the problems related to challenges of finding providers.
- Dental services are expensive and not covered by Medicare and private insurance. Dental issues are related to other health issues and should be covered.
- We are here because we appreciate what you do.
- It's important we take care of our people.
- We need more meetings like this.
- Mental health issues are similar to dental issues as listed above.

3. Comments on possible Physical Disability program changes related to waiver renewal (limiting age to strictly 64, using Social Security definition of physical disability, and adding clarification to the crisis process):

- What will I lose if I move to FE? Difference in pay for attendant care. Limitation of hours – it will not replace what PD has. PD has more services.

HCBS Programs: Multi-Topic Listening Sessions.

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- Struggle with 40 hr limit to find someone who can cover all hours. Forces people to institutional care.
- Limit of 40 hours will cause worker to go do different work where they truly make more.
- Fee for “on call” or sleep cycle should be kept.
- Limit to one provider to one consumer? Is that true? Should not be the case if they work less than 40 hours, they should be able to split 40 hours between consumers.
- Bill 40 hours to HCBS and worker can still work for other pay source.
- MCOs care coordinators are uninformed about these changes - not part of the provider calls.
- Depending on the level of care, some people on PD do choose to move to FE.

4. Comments on possible Autism program changes due to Kansas legislation:

- Sleep cycle pay is a minimum of 6 hours (\$25). Some need fewer hours – can’t we pay an hourly wage?
- MCOs can’t afford to pay new rates. Will they have to negotiate a new contract in order to afford it?
- Need waiver for isolated communities where getting service providers is difficult. If the guardian can provide services – s/he should get paid. IRS rules are a problem. We don’t want clients to have to go to institutions.
- Independence is important but that doesn’t mean we take away all support. It should be case by case.

Salina, August 20, 2014, 1:30-3:30pm

KDADS presenters: Kimberly Pierson, Jim DeCoursey, John Barry

CCSR facilitators: Kevin Bomhoff & Judy Burgess

45 attendees

1. Comments on Department of Labor rule changes, Fiscal Management Services model proposed by the FMS workgroup, the impact of Department of Labor and FMS changes on guardianship and personal services, and the multi-functional eligibility instrument:

- Most at risk group with vendor fiscal agent – what is benefit? Who will pick this responsibility up when consumer unable to make decision?
- Why all these changes? What benefit is there? (Paid adequate wage.)
- How will workman’s comp be handled? (FMS will still do this.)

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- Higher role of parents and guardians not able to serve as providers is very detrimental.
- What if you want the day service in-home? (No guidance on this yet.)
- Money is being taken away from providers-guardians – if they do the care – may need to give that without payment.
- Some of this push for independence is dangerous when person cannot make choices.
- Why do feds want to change model?
- Left 15 hours of work on the table but when workers can't show up then we don't use this care. Guardians fill all the gaps but don't get paid.
- Vendor fiscal agent model is not a good idea – puts too much on consumer/person served. FMS can still provide training.
- FMS provider helps protect the consumer. There will be unscrupulous people who will prey on consumers.
- Clarify workman's comp requirement.
- Will people in private residences be reviewed? Their homes are private.
- Sleep cycle support – paying minimum wage is a good idea.
- If a person is provider and guardian, some protection needs to be in place if something happens to someone who provides all the roles.
- Rural communities do not have many people to provide services.
- Late in talking to this group. Study group for FMS: FMS providers, parents, advocates.
- Kansas is also mandating these changes – FMS. More people need to be included in these decisions.
- Is Kansas aware of lawsuits related to change in guardianship rules?
- Guardian would need to seek court approval to be a provider – separate from IRS rule.
- How about adults who live with children? (Adult self directs for child to provide services – some policies keep that person from being paid.)
- We live in a community where we can't get workers. Burden is on the family.
- If the judge approves the guardianship, why does DOL override that?

2. Comments on possible Frail Elderly program changes related to waiver renewal:

- Need communication when care coordinator changes.
- Workers not showing up has been a problem.
- We bought a house we couldn't afford so Mom could live with us. FE waiver is working.
- Natural solution of moving FE in with family produces barriers we need to get rid of. We want them with us rather than in an assisted living facility. TRUST is an issue.
- Neglect by social services is very hard on family.
- People trust family first.

HCBS Programs: Multi-Topic Listening Sessions.

Public Comment Sessions: August 18-25, 2014

- How do you enter FE?
- Suggested there be a waiver of over-time pay if worker refuses it. Worker will work over 40 hours with no over-time paid – work at regular salary.

3. Comments on possible Physical Disability program changes related to waiver renewal (limiting age to strictly 64, using Social Security definition of physical disability, and adding clarification to the crisis process):

- If on FE waiver, you can get Meals on Wheels.
- Reassess needs based on workers only being able to work 40 hour week. May need more hours or different services.
- Why don't we move automatically from PD to FE when you turn 64?
- Current list of crisis restrictions is too restrictive (Maintain living in community, no supports, rapid decline). Should we use these to "grade" the need?
- Certain levels of services rendered by nursing home – should indicate person is in need of services.
- PD waiver allows some to keep working.
- FE has been harder to get hours in past but now they are managed by same dept.
- We lack workers now and new rules will reduce number of workers.
- Negotiate with FMS on pay rate. Ultimately FMS can say "I can't do that."
- Rate increase could help with these changes.
- Increased restrictions will force people toward institutions.
- MCOs need to be included in this discussion – not able to answer these questions.
- FE and PD have same agencies now so transition from one to another makes more sense.
- There needs to be a transition plan between PD to FE so they can be more informed. People stay on PD because that's what they need.
- Crisis exemption ideas. Need more idea of assessing needs beyond current list of exceptions.

4. Comments on possible Autism program changes due to Kansas legislation:

- Need communication when care coordinator changes
- Workers not showing up has been a problem
- Federal mandates don't understand or address real life issues of autism.
- MRDD allows for 24hrs/wk service when more is needed. This needs to be expanded – not cut.
- Not getting response from MCO - have negative feelings about how they handle son's issues. (Amerigroup)
- State isn't doing a good job of monitoring what is happening. You're listening at these meetings and that's positive, but doesn't go beyond.
- OCK manually adjusting time sheets even in emergencies.

HCBS Programs: Multi-Topic Listening Sessions.

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- Need to aggressively gather info on what is happening in the field with MCOs. Track what is happening and fix it.

Topeka, August 21, 2014, 10:00am-noon

KDADS presenter: Aquila Jordan, Kimberly Pierson, Susan Fout

CCSR facilitators: Kevin Bomhoff & Scott Wituk

103 attendees

1. Comments on Department of Labor rule changes, Fiscal Management Services model proposed by the FMS workgroup, the impact of Department of Labor and FMS changes on guardianship and personal services, and the multi-functional eligibility instrument:

- Is there a possibility of salary versus hourly? DOL probably will not allow.
- Plan of care not being limited. This is about 40-hour limit per week for workers.
- Attendants that go with people on vacation or travel—how to handle that?
- Spousal expectation – still limit to 40 hours
- Veteran \$10.10 requirement will likely go into effect – how will this impact personal care?
- Confined workers need help coming in for half hour or short periods.
- FMS providers will help you get FEIN.
- Draft waivers themselves not public, watch website for information. Advocates want to see the draft waiver and believe not being able to see the draft is lack of transparency on part of state. (Several comments related to this.)
- MCO has their own risk assessment. How many assessments are really needed and can this be streamlined?
- ACA impact on FMS provider is unclear.
- \$31 million needed to cover sleep cycle. Where will that come from?
 - From other program?
 - More people waiting?
 - Other?

2. Comments on possible Frail Elderly program changes related to waiver renewal:

What is working/not working?

- Consumer choice, working choice to stay in the setting they want.
- Some do not have internet. KDADS needs to get info out, keep looking for ways to get info out.
- Where are public comments from last round?
- Waiver is excellent, tough filling small # of hours in rural areas.

HCBS Programs: Multi-Topic Listening Sessions.

Public Comment Sessions: August 18-25, 2014

- Begging people to do this work, can't get a worker for four hours to travel to a rural area.
- 3. Comments on possible Physical Disability program changes related to waiver renewal (limiting age to strictly 64, using Social Security definition of physical disability, and adding clarification to the crisis process):**

What is working well?

- Sleep cycle - paying similar to a contract for "x" dollars a night.
- Self-direction affords choice of when receive services, etc., provides options, allows people to live in their own homes, eat when and what they want to eat.
- Choice of who works for me, and who comes into my home.

What is not working well?

- Multiple workers can make things difficult for persons served.
- Turnover, especially when frequent, creates difficult transitions

Recommendations/Ideas:

- Ask us exact questions that are needed by CMS. We will respond.
- Transition from PD to FE Waiver needs to be clearer, what are the differences between the two? Is it true that FE pays more for attendant care and FE has respite? No sleep cycle under FE? PD has meals on wheels?
- Need to really pay attention to differences and how those changes apply to you.
- Need information about informational meetings well in advance.
- MCO had little to no information about letter that the consumer's received.
- Can KS Department of Labor attend these meetings? They should hear from us.
- Encourage letters/flyers that advocate to contact agencies, etc. Advocacy organizations can do this/help in this way.
- What is CMS opinion related to DOL?

4. Comments on possible Autism program changes due to Kansas legislation:

What is working/not working?

- Need more help finding workers for autism.
- Any way to set higher wage level for training and experience, they leave after training?
- More providers to train and keep due to 40 hours limitation.
- Changing provider agitates people with autism.
 - Words person uses, etc.
 - Finding someone you are comfortable leaving children with.
- Need more people interested and trained to work with autism.
- Need database of workers, KDADS putting that together—need this for non-agency load and agency based.
- Early intervention is the key, harder as they get older.

HCBS Programs: Multi-Topic Listening Sessions.

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- Make training available to parents who fill in gaps.
- Look for ways to tie services together, create more coordination.
- Basis questions put him at a lower tier level than he should be. He gets less.
- Needs to get a job but cannot have a job coach while getting paid. This needs to be changed.

Topeka, August 21, 2014, 1:30-3:30pm

KDADS presenters: Kimberly Pierson, Jim DeCoursey, John Barry

CCSR facilitators: Kevin Bomhoff & Scott Wituk

53 attendees

1. **Comments on Department of Labor rule changes, Fiscal Management Services model proposed by the FMS workgroup, the impact of Department of Labor and FMS changes on guardianship and personal services, and the multi-functional eligibility instrument:**

- Consumers need to receive training and support to be employer.
- Sleep cycle keeps people out of nursing homes. What if parent needs to go to the hospital, how do I cover sleep cycle?
- Person with FEIN cannot be paid. FMS workers will work to find someone to take FEIN so guardian can get paid to provide service.
- Sleep cycle is a major concern – life and death. Cost of sleep cycle is less than institutional care.
- Since state provides money and is employer, will those who work for state agencies not be able to provide direct care (exceeding 40 hours)? This will limit number of workers.
- When worker calls in sick, other worker is restricted to 40 hours and can't cover for the first worker.
- If individual has own FEIN, then they should be considered separately from other FEIN. **Response from state staff:** DOL still considers Kansas the employer.
- People will die in bed without sleep cycle support, (so many terrible possibilities including tornados, etc.).
- Federal government should not have a right to tell parent that they cannot provide service.
- CDDO, state of KS—Homes are all checked already—why more inspections?
- Many homes will not meet HCBS settings final rule from CMS requirements.
- If I am a state employee, how does that affect me? I will need to quit my job in order to provide care for my child! Is that what the federal government wants?
- Share list of people on team developing new assessment.
- Will residential providers need to pay when closed for holidays or will state pay overtime?

HCBS Programs: Multi-Topic Listening Sessions.

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- State setting of rate makes KDADS the employer - if we had a range of wages and negotiated wages, would Kansas then not set wage and then not be the employer?
- Need full transparency to see HCBS waiver application before it is submitted. (See comments above.)
- See results of assessment study and post on website (more transparency).
- Setting limits (caps) keeps individualized plans from being developed.
- Personal services more cost effective than institutional, should put more \$ into personal assistance.
- Put all the “middle-people” together that come into my home and have them provide services instead! Save some \$ to support services.

2. Comments on possible Frail Elderly program changes related to waiver renewal:

What is working/not working?

- Will you pay for attendant care instead of sleep cycle? (As needed)
- Flat rate on sleep cycle may pay for more than needed. Can KDADS cover need with other services?
- Is there a way to be on call with a pager?
- If people got paid more, they would not have to work so many more hours and clients.
- With aging population, how can we combine FE and other services in the same home for people on more than one waiver?
- FE is more medical. It will need to be made more person-centered to move people off of PD waiver.
 - Delivered meals
 - Pay rates
 - Hours of support
 - Transportation
- Get input from those in both camps. PD and FE help fixing this.
- FE do not give input as much as PD. This impacts planning.

3. Comments on possible Physical Disability program changes related to waiver renewal (limiting age to strictly 64, using Social Security definition of physical disability, and adding clarification to the crisis process):

Recommendations/Ideas:

- Changes in waivers need to be put out to the broader group of stakeholders
- Regarding verification from doctor: Train group of assessors rather than Dr. having to do verification (another hoop to jump through). Physician offices will charge for these.
- 704 info/piece could be included (it is self-report) and a place to start.
- PD waiver is richer package of services
 - Transportation

HCBS Programs: Multi-Topic Listening Sessions.

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- Sleep cycle support
- Shopping/transportation
- FE waiver to be changed so that similar package of services—is that possible?
- Many elderly people need similar services (e.g., sleep cycle).
- Bring PD and FE waivers together.
- Look at other state models and try to address differences
- Develop a tool for indicators to determine for danger of institutionalization (see KU School of Social Work or others?).
- Form a work group to examine the issue - pull best assessors and others.

4. Comments on possible Autism program changes due to Kansas legislation:

What is working/not working?

- Is there a movement to expand Autism waiver? Not enough people eligible to support an autism specialist. Not fiscally viable. Reimburse per hour but not enough hours to make this work.
- May need to promote services of Medicaid better/get people off waiting lists.
- Need to get children with Medicaid sooner. Without Medicaid expansion, fewer have this option.
- Confusion between MCOs and schools about autism information. Should call KDADS to track this for patterns (when problems arise).

Kansas City, Kansas, August 22, 2014, 10:00am-noon

KDADS presenters: Kimberly Pierson, Jim DeCoursey, John Barry

CCSR facilitators: Kevin Bomhoff & Steve Williams

159 attendees

1. Comments on Department of Labor rule changes, Fiscal Management Services model proposed by the FMS workgroup, the impact of Department of Labor and FMS changes on guardianship and personal services, and the multi-functional eligibility instrument: (Responses from state staff in parentheses.)

- Can the person with the disability apply for the EIN?
- Parents stress and develop mental health issues.
- Difficult to find additional workers that you can trust.
- Can't get another job because of the care that is required of my son.
- Can the person be paid the overtime? (Kansas will have to make a decision.)
- How do you know when the 40 hrs stops if working for multiple agencies?
How/who will keep track?
- New law limits self-directed choice when there is a limit on hours.

HCBS Programs: Multi-Topic Listening Sessions.

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- Do we have to pay to go back to court to have guardianship change? Currently yes – hope to change.
- Sleep cycle – will it be eliminated? It is a matter of life and death in many situations.
- We can't find people to work only 7 hrs.
- If we get EIN, how does this affect taxes?
- How is an employee to be trained? Can Employee be paid for training? (Training is not part of the funding.)
- How do you get an EIN? (FMS will assist.)
- When does guardianship/model go into effect? (This is subject to whether model is changed.)
- Will IRS allow an individual who does not have capacity to direct, get an EIN? Another family who could do it.
- Why is Kansas looking at a new model? (Bottom line is FMS will have to pay health insurance if it has more than 50 employees.)
- Under Affordable Care Act – how do you get an exemption?
- Daughter was in an institution – had to fight to get her back home – put her in a group home – she had items stolen, was sexually assaulted – don't want daughter to be unsafe again!!! Underpaid staff, absenteeism – no security system – where do I go from here? Family support is a system that works.
- If we relinquish guardianship – would court rule as a conflict of interest?
- No auditing under current FMS system! Why can't we make FMS employers be providers? (FMS is co-employer.)
- Relinquishing guardianship is not an expedited process with the courts.
- How does this affect Durable Power of Attorney? (Needs to look at this – alternative for families.)
- What will be the process for implementing the new tool? (Talking about a phase in.)
- Difficult to keep good staff when pay is low, i.e. sleep cycle \$25.00 per night. (Will have to pay minimum wage for all sleep support.)
- Workers don't show up – we have dedicated hours – parents can't when staff doesn't show = why aren't MCOs helping with this?
- Regarding CMS final rule on HCBS settings: do I need to create a lease agreement in my own household? How would lease agreement be developed? Do I have to become a landlord? Safety issues need to be addressed.
- Will FMS take on responsibility of taxes for the individuals? Working healthy programs collect FICA – PPL.

- 2. Comments on possible Frail Elderly program changes related to waiver renewal:** Notes on this topic for this session got lost in the shuffle and therefore are not available.

HCBS Programs: Multi-Topic Listening Sessions.

Public Comment Sessions: August 18-25, 2014

3. Comments on possible Physical Disability program changes related to waiver renewal (limiting age to strictly 64, using Social Security definition of physical disability, and adding clarification to the crisis process):

- Meals on wheels – sleep cycle – adult day care
- Transfer from PD, provide info on changes between waivers.
- Individual w/ MH/BH
- Increase age from 65
- Quality/quantity of workers

4. Comments on possible Autism program changes due to Kansas legislation: Notes on this topic for this session got lost in the shuffle and therefore are not available.

Paola, August 22, 2014, 1:30-3:30pm

KDADS presenters: Kimberly Pierson, Jim DeCoursey, John Barry

CCSR facilitators: Kevin Bomhoff & Steve Williams

46 attendees

1. Comments on Department of Labor rule changes, Fiscal Management Services model proposed by the FMS workgroup, the impact of Department of Labor and FMS changes on guardianship and personal services, and the multi-functional eligibility instrument: (Responses from state staff in parentheses.)

- FMS provider – state is letting FMS provider dictate services. (State is neutral – want your input.)
- FMS is trying to get out of ACA – KDADS didn't listen on KanCare – why should we listen now?
- What are other states doing? Don't reinvent the rule. (Kansas is ahead of other states on DOL.)
- What do other states do with FMS? (No models like this – just cut paychecks – limited on who can self-direct.)
- Vender Fiscal Agent – model would pay less. (VFA will be paying workers' comp or liability – is state no longer a joint partner? - will be determined by DOL.)
- Guardianship – has dual with son in Iowa – If I turn over to him, can I get a Durable Power of Attorney?
- If guardian is appointed – can direct care, but not be paid caregiver – who is the employer?
- Care in group home was “horrible” – now at home – needs services to continue and need money.
- Workers for several clients – how will this work under the 40 hr rule?

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- Many have numerous part time jobs and it is legal – i.e. McDonald's, Walmart.
- Won't have enough workers to fill all the hours that are needed! How can we survive?
- If require EIN will require insurance – authority (new) to consumer – why can't we go back before FMS?
- Where are we going to place people if we can't provide/find workers?
- Any new guidance in day care setting?
- State money is going to the three MCOs not to providers – does this have an affect?
- What can we do on a national level? Who can we contact? Who is getting the information? We need list of people to call/write.
- Parents in other states need to be doing this also – contacting legislators, DOL. Can we sign governor's letters? We need to get signatures. How do we make this important to those who make decisions?
- Have a personal representative – in lieu of guardian – in Oregon.
- Putting too much on consumers – rights of our people.
- Have state attorney look at employee practices.

2. Comments on possible Frail Elderly program changes related to waiver renewal:

- Identify people on PD waiver willing to move to FE.
- Make FE waiver more appealing.
- Keep "sitting" as an exemption since paid by family – for non-minor.
- MCO's need to understand these changes. We are already fighting the MCO battle – cutting services.
- Problems with MCO payments still a problem – 3 different systems.
- Takes amazing "manpower" to bill.
- Always a reason not to pay penalties for not paying.
- Have to call MCOs over and over and talk with different people.
- MCOs not consistent in plan of care.
- Do we have a back-up plan if managed care does not make it?
- Dollars are telling us what to do ... not consumers.
- Begging MCOs for "minutes."
- More public meetings
- Put comments from tour on website.
- Promote these meetings to licensed assistant living or licensed facility.

3. Comments on possible Physical Disability program changes related to waiver renewal (limiting age to strictly 64, using Social Security definition of physical disability, and adding clarification to the crisis process):

- Transfer from PD to FE waiver – should be doing this because of waiting list.
- FE works very similar to PD.

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- 16-year-old can get many services through the school – maybe increase age?
- Need documentation requirement for social security – any ideas?
- Biggest concern is no night support.
- Documentation of needed services might free up money for others.
- Communication needs to improve to consumers – such as notification of meetings, etc.
- Advocacy was better when we had case managers and who we had as case managers.
- Current FMS systems works – don't change.

4. Comments on possible Autism program changes due to Kansas legislation:

(No comments on autism.)

Conference Call, August 25, 2014, 11:00am-noon

KDADS staff: Kimberly Pierson

KDHE staff: Amy Swanson

CCSR facilitator: Amy Delamaide

51 people on the line, including facilitator and state staff

Kimberly Pierson presented regarding Department of Labor rule on FLSA, FMS workgroup recommendations for changes to model, the new functional eligibility assessment instrument, and HCBS program changes. Also information on Autism program changes and FE/PD waiver renewals was presented.

Amy Swanson from KDHE presented information on the 1115 SQS.

Facilitator asked one question and callers provided comments:

What should we keep in mind going forward as we plan to address these areas?

Comments:

On the topic of the 1115 SQS:

- **Lori:** Where can I read this information written down?(**Response:** KDHE website, state register (vol 33, #34). Written comments may be sent through the state register, or state KanCare website. Or to aswanson@kdheks.gov.)

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On HCBS topics:

- **Lori:** Where can I read this information written down? (**Response:** www.kdads.ks.gov Will be available/posted within 24 hours. Click on HCBS provider link on left.)
- Question from facilitator to state staff: And where can written comments be submitted? (**Response:** HCBS-KS@kdads.ks.gov)
- **Dee:** What is the specific time frame for training/testing for the new MFEI? How long will the training/testing period be? When will the Implementation start for FE, PD, TBI waivers? When rolled over to I/DD? (**Response:** We anticipate that training period will start soon. Data and testing will last 6 months. After that, we're not sure. Want to make sure that the tool is exactly as it needs to be, without affecting numbers of people deemed eligible.) You are suggesting that KU is going to do a study of the current eligibility tool for the I/DD population and you are not considering the Inter-RAI for the I/DD population at this time? (**Response:** we are looking at the assessment for its application to I/DD.) Do you expect that to be completed in FY15? (**Response:** that probably won't be possible.) Do you have a start time for when they'll start working on the evaluation of BASIS? (**Response:** no start date yet.)
- **Jeannette:** I have a question about DOL minimum wage rule. Does that affect agency-directed sleep staff? We pay different rates for time spent asleep versus awake. Does this change require change to rate while staff person is asleep? (**Response:** yes, while staff are sleeping, they will need to be paid at least minimum wage.)
- **Bob:** Does that last question just apply to sleep cycles or to live-ins? Would live-ins at group homes have to be paid minimum wage while they are sleeping? (**Response:** Workers performing a duty or task and reimbursed by the state, must follow the minimum wage rules. Kansas doesn't have any services that fall under the exemption.)
- **Terry:** Regarding the vendor fiscal agent model, other states have indicated that there are multiple workarounds regarding guardian and employer of worker, such as the Medicaid member could be employer of record, then appoint a manager. The manager would not need to be the guardian. The guardian could be the employer of record, it is not a direct support worker. Or a surrogate non-guardian could be the employer of record.
- **Jackie:** Regarding what the state needs to keep in mind going forward, we're just days away from September. These changes are set to take effect on January 1. As a parent and as a provider who works with other parents, it takes time to find staff, train staff, and make changes. Waiting till the last minute to address overtime or healthcare obligations or a model change will cause great panic and stress to families. It's scary knowing we have these changes coming. I can't imagine having to hire 4-5 more people in the next month or two to work with very vulnerable individuals. Time is very important and we need time for parents, guardians, and consumers to figure out these changes and get ready for the changes

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- **Jackie:** Regarding guardianship and licensed providers, we've received the memo. Throughout the memo, it references the state law. What are non-licensed providers supposed to do when talking with guardians, for our guardians to address non-licensed guardians? Reporting measures are already in the law. How will you know what needs to be done or what has been done? (**Response:** we'll have to take these questions into account when we decide what the process is going to be, or if it is KDADS' responsibility.)
- **Mitch:** I spoke with Susan Fout regarding the memo that came out about guardians. Personally I don't think this is for self-direction. Everything talked about licensees. She said she would look into it and get a memo out when she heard more.
- **Jackie:** Regarding the meetings last week, does Kimee have any responses from individuals about guardianship or the FMS model. Will those be posted? (**Response:** the last session was late Friday afternoon. WSU will compile the feedback. We got feedback forms from each session. We will work with WSU to compile that then get it posted on the website.)